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purchaser first interested by his rival is the one entitled to commission.

[Ed. Note.—For other cases, see *Brokers*, Cent. Dig. §§ 82-84; Dec. Dig. § 55* 2 Va.-W. Va. Enc. Dig. 641; 14 Va.-W. Va. Enc. Dig. 176; 15 Va.-W. Va. Enc. Dig. 145.]

Error to Law and Equity Court of City of Richmond.

Action by John W. Bates against James Cannon, Jr. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded.

Hill Montague and *R. E. Byrd*, both of Richmond, for plaintiff in error.

Garnett, Pollard & Smith, of Richmond, for defendant in error.

DIEBOLD *v.* TATTERSON.

Jan. 15, 1914.

[80 S. E. 585.]

1. **'Mechanics' Liens (§ 154*)—Proceedings to Perfect—Affidavits—Sufficiency.**—Where the president of a corporation seeking a mechanic's lien signed the affidavit appended to the statement of account as president and agent for the corporation, the affidavit sufficiently showed that it was made by an agent of the lienor.

[Ed. Note.—For other cases, see *Mechanics' Liens*, Cent. Dig. §§ 261-267; Dec. Dig. § 154.* 9 Va.-W. Va. Enc. Dig. 765; 14 Va.-W. Va. Enc. Dig. 703; 15 Va.-W. Va. Enc. Dig. 703; 15 Va.-W. Va. Enc. Dig. 667.]

2. **Mechanics' Liens (§ 149*)—Perfection—"Account"—"Thing"—"Matter."**—A corporation seeking a mechanic's lien filed an account which first alleged that it showed the amount and character of the work and material furnished, and was followed by an itemized account, at the end of which was appended a statement that, after deducting the credits from the debits, there was a balance of \$7,041.93 due the corporation. The jurat of the notary which followed the signature of the corporation's agent recited that the agent made oath that the matters and things stated in the foregoing account were true, and that the account was correct. Held, that as the word "matters" means with regard to or about which anything takes place, and as the word "thing" is equivalent to a transaction or occurrence, the account was sufficient; the word "account" in its broad sense meaning a recording or computation.

[Ed. Note.—For other cases, see *Mechanics' Liens*, Cent. Dig. §§ 256-259; Dec. Dig. § 149.* 9 Va.-W. Va. Enc. Dig. 765; 14 Va.-W. Va. Enc. Dig. 703; 15 Va.-W. Va. Enc. Dig. 667.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

For other definitions, see Words and Phrases, vol. 1, pp. 86-96; vol. 8, p. 7561; vol. 8, pp. 6957, 7815; vol. 5, p. 4413; vol. 8, p. 7718.]

3. Equity (§ 410*)—Report of Commissioner—Weight.—The report of a commissioner in chancery is prima facie correct, and objections thereto must be made by exceptions, and, if excepted to, the court will examine the evidence to see whether it sustains the master's conclusions, but his conclusions on conflicting evidence will not be disturbed unless against clear weight of the evidence.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 905-919; Dec. Dig. § 410.* 11 Va.-W. Va. Enc. Dig. 748; 14 Va.-W. Va. Enc. Dig. 888; 15 Va.-W. Va. Enc. Dig. 859.]

Appeal from Circuit Court of City of Norfolk.

Suit by the John Diebold & Sons Stone Company, Incorporated, against Lizzie M. Tatterson, as executrix, and others. There was a decree for defendants, and plaintiff appeals. Reversed.

Jeffries, Wolcott, Wolcott & Lankford and *John A. Baecher*, all of Norfolk, for appellants.

Jno. B. Jenkins, Wilcox, Cooke & Willcox, E. R. F. Wells, and *Jas. G. Martin*, all of Norfolk, for appellees.

HAWLING *v.* CHAPIN et al.

Jan. 15, 1914.

[80 S. E. 587.]

1. Appeal and Error (§ 1042*)—Review—Failure to Enter Order.—That the trial court improperly refused to strike defendant's pleas, intending to strike them when the question was raised during the trial, did not cure the error in admitting them.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4110-4114; Dec. Dig. § 1042.* 1 Va.-W. Va. Enc. Dig. 597; 14 Va.-W. Va. Enc. Dig. 95; 15 Va.-W. Va. Enc. Dig. 70.]

2. Limitation of Actions (§ 39*)—Actions for Nuisance.—An action for damages for defendants' maintenance of cesspools on their land, which polluted plaintiff's well and rendered his property less valuable, may be brought at any time within five years, being governed by Code 1906, § 2927, providing that every personal action for which no limitation is otherwise fixed shall be brought within five years after accrual.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. §§ 172, 190-211; Dec. Dig. § 39.* 9 Va.-W. Va. Enc. Dig. 408.]

3. Appeal and Error (§ 1042*)—Review—Harmless Error.—In an

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.